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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,718	05/15/2007	Ernst V. Arnold	065611-0119	1962
22428	7590	12/30/2009	EXAMINER	
FOLEY AND LARDNER LLP			SUTTON, DARRYL C	
SUITE 500				
3000 K STREET NW			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20007			1612	
			MAIL DATE	DELIVERY MODE
			12/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/588,718	ARNOLD ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	DARRYL C. SUTTON	1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 September 2009.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3-12 and 14-54 is/are pending in the application.  
 4a) Of the above claim(s) 5-12, 14-17 and 19-54 is/are withdrawn from consideration.  
 5) Claim(s) 4 is/are allowed.  
 6) Claim(s) 3 and 18 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/14/2009 has been entered. Claims 1, 2 and 13 have been canceled.

Applicant's arguments filed 09/14/2009 have been fully considered. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

In the Response to Restriction dated 02/21/2008, Applicant elected (d) polystyrene polymer, i.e. a phenyl-containing polymer, therefore, claims 6, 7, 28, 37, 49, 51, 53 and 54 are withdrawn as not being drawn to the elected species. Polystyrene is not a benzyl-containing polymer.

***Claim Rejections - 35 USC § 112, 1<sup>st</sup>***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The instant specification fails to provide an adequate written description of the invention with regard to "Formula I" (see page 5). While R3 is defined to be "phenyl" (see page 5, paragraph 0016), the formula requires recitation of a polymer backbone moiety to make sense, which it does not. Instead, the polymer backbone is indirectly referred as follows: "The phenyl group may be pendant from *the polymer backbone* (as shown in Formula 2) or part of *the polymer backbone* (as shown in Formula 3). (Paragraph 0016, emphasis added).

A structural formula should be complete in and of itself; as currently written "the polymer backbone" requires reference to additional formulae, rendering base formula I incomplete (and therefore inadequately described). Correction is required.

***Claim Rejections - 35 USC § 112, 2nd***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Formula I is incomplete, and therefore confusing, as outlined in the "Written Description" rejection supra.

***Allowable Subject Matter***

Claim 4 is allowable.

Claims 3 and 18 would be allowable if claim 3 was rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Applicant's have prepared a diazeniumdiolate containing polymer and incorporated it into a composition. The diazeniumdiolate functionality is covalently bonded to a pendant phenyl moiety of the polymer through a benzylic carbon. The closest prior art, Cafferata, US 2003/0083739 teaches compositions comprised of phenyl containing polymers, such as polystyrene, and nitric oxide releasing compounds

in general; but does not teach the structure of the resulting polymer and nitric oxide releasing compound combination or appropriate methods of making the composition of the instant application.

### **Correspondence**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darryl C. Sutton whose telephone number is (571)270-3286. The examiner can normally be reached on M-Th from 7:30AM to 5:00PM EST or on Fr from 7:30AM to 4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass, can be reached at (571)272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Darryl C Sutton/

Art Unit: 1612

Examiner, Art Unit 1612

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612